



Doc Code: AP.PRE.REQ

PTO/SB/33 (12-08)

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

1400.4100285

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on 08-11-2009

Signature

Typed or printed name Ross D. Snyder, Reg. No. 37,730

Application Number

09/821,208

Filed

03-28-2001

First Named Inventor

Shawn P. McAllister et al.

Art Unit

2416

Examiner

Han, Clemence S.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)☒

attorney or agent of record.

Registration number 37,730

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

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Telephone number

08-11-2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Shawn P. McAllister, et al.

Title: METHOD AND APPARATUS FOR REROUTING A CONNECTION  
IN A DATA COMMUNICATION NETWORK BASED ON A USER  
CONNECTION MONITORING FUNCTION

App. No.: 09/821,708 Filed: 03-28-2001

Examiner: Han, Clemence S. Group Art Unit: 2416

Atty. Dkt. No. 1400.4100285

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Mail Stop AF  
Commissioner for Patents  
PO Box 1450  
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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

Claims 1-9, 12-15, 18-26, 28-31, 34-40, and 42-44 are pending in the application. Claims 1-9, 12-15, 18-26, 28-31, 34-40, and 42-44 are rejected. Appellant respectfully requests reconsideration of pending claims 1-9, 12-15, 18-26, 28-31, 34-40, and 42-44. Appellant files herewith a notice of appeal. Pursuant to the "New Pre-Appeal Brief Conference Pilot Program," 1296 Off. Gaz. Pat. Office 67 (July 12, 2005) and the "Extension of the Pilot Pre-Appeal Brief Conference Program" dated 1/10/2006, Appellant submits a pre-appeal brief request for review. The review is requested for the reasons set forth below:

Applicant submits there exist clear errors in the Examiner's rejections and/or the Examiner's omissions of one or more essential elements needed for a *prima facie* rejection. Applicant submits the Examiner's "Response to Arguments" provides evidence that the Examiner has failed to consider the pending claims as required by the Manual of Patent Examining Procedure (MPEP) and prevailing case law. MPEP § 2141 sets forth the Graham inquiries for a rejection under 35 U.S.C. § 103. MPEP § 2143 describes examples of basic requirements of a *prima facie* case of obviousness under 35 U.S.C. § 103. As Applicant describes in detail below, Applicant submits there exist clear errors in the Examiner's rejections and/or the Examiner's omissions of one or more essential elements needed for a *prima facie* rejection.

The Examiner has rejected claims 1-9, 12-15, 18-26, 28-31, 34-40 and 42-44 under 35 U.S.C. §103(a) as allegedly being unpatentable over Srinivasan et al. (U.S. Patent No. 6,304,549) in view of Cedrone et al. (U.S. Patent No. 6,538,987). Applicant respectfully disagrees.

Regarding claim 1, as an example, Applicant submits the cited portions of the cited references fail to render obvious "when the status of the selected characteristic is determined to be unacceptable, initiating control plane rerouting of the connection, wherein the user connection monitoring function includes OAM continuity checking, wherein initiating control plane rerouting of the connection comprises evaluating a new connection before the connection is abandoned, wherein the control plane rerouting over the new connection occurs when a new connection selected characteristic of the new connection is better than the selected characteristic of the connection." While the Examiner cites portions of Figure 4 and "(Column 8 Line 44)" of the Cedrone reference with respect to such features, Applicant notes the Examiner also cites "(Column 17 Line 22-25)" of the Srinivasan reference, which states, "Additionally, as indicated at step 367, when a connection server CS determines that a link 1 has failed, it reroutes any VPCs that it is monitoring, which use this link, by returning to step 210, FIG. 7," with respect to other features of claim 1. Applicant submits such teaching teaches away from the features of claim 1 for which the Examiner cites the portions of the Cedrone reference as allegedly disclosing. Accordingly, Applicant submits it would not have been obvious to one of ordinary skill in the art to combine the alleged teachings of the cited references and, even if an attempt were made to combine such alleged teachings, such an attempt would not yield the subject matter of claim 1.

Regarding claims 18-20 and 34, as an example, Applicant submits the cited portion of the cited reference fails to render obvious "wherein the data communication network supports Multi-Protocol Label Switching (MPLS)." As another example, Applicant submits the cited portion of the cited reference fails to disclose or suggest "wherein the control plane includes at least one of Label Distribution Protocol (LDP) and ReSerVation Protocol (RSVP)." As yet another example, Applicant submits the cited portion of the cited reference fails to disclose or suggest "wherein the connection is a Label Switched Path (LSP)." As a further example, Applicant submits the cited portions of the cited reference fail to disclose "wherein the data stream is a Multi-Protocol Label Switching (MPLS) data stream and wherein the first and second connections correspond to label switched paths." Applicant notes the Examiner acknowledges "Srinivasan in view of Cedrone does not teach the specific protocols" but alleges "It would have been obvious to one skilled in the art to modify Srinivasan in

view of Cedrone to be used with MPLS, LDP or RSVP and LSP in order to be adapted to specific network. Applicant notes the Examiner does not cite any reference as disclosing "MPLS, LDP or RSVP and LSP." Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness with respect to claims 18-20 and 34. Applicant notes Applicant has submitted argument with respect to claim 1 as to the Srinivasan reference teaching away from a supposed combination with the alleged teachings of the Cedrone reference so as to purportedly yield the subject matter of claim 1, from which claims 18-20 directly or indirectly depend. Thus, Applicant submits the Srinivasan reference also teaches away from claims 18-20.

Regarding claims 2-9, 12-15, 21, and 22, as an example, Applicant submits the cited portions of the cited references fail to render obvious the subject matter of such claims. While the Examiner cites portions of the cited references as allegedly teaching the subject matter of such claims, Applicant notes Applicant has submitted argument with respect to claim 1 as to the Srinivasan reference teaching away from a supposed combination with the alleged teachings of the Cedrone reference so as to purportedly yield the subject matter of claim 1, from which claims 2-9, 12-15, 21, and 22 directly or indirectly depend. Thus, Applicant submits the Srinivasan reference also teaches away from claims 2-9, 12-15, 21, and 22.

Regarding claim 23, as an example, Applicant submits the cited portions of the cited references fail to render obvious "wherein the control block performs an evaluation of the second connection, wherein the data stream is rerouted over the second connection only if a second connection status of the second connection selected characteristic is better than the status of the selected characteristic." While the Examiner cites portions of Figure 4 and "(Column 10 Line 31-47)" of the Cedrone reference with respect to such features, Applicant notes the Examiner also cites "(Column 17 Line 22-25)" of the Srinivasan reference, which states, "Additionally, as indicated at step 367, when a connection server CS determines that a link 1 has failed, it reroutes any VPCs that it is monitoring, which use this link, by returning to step 210, FIG. 7," with respect to other features of claim 23. Applicant submits such teaching teaches away from the features of claim 23 for which the Examiner cites the portions of the Cedrone reference as allegedly disclosing. Accordingly, Applicant submits it would not have been obvious to one of ordinary skill in the art to combine the alleged teachings of the cited references and, even if an attempt were made to combine such alleged teachings, such an attempt would not yield the subject matter of claim 23.

Regarding claim 36, as an example, Applicant submits the cited portion of the cited reference fails to render obvious “wherein the control plane rerouting of the connection comprises evaluating a new connection such that rerouting to the new connection occurs when at least one new connection characteristic of the new connection is better than the at least one characteristic of the connection.” While the Examiner cites portions of Figure 4 and "(Column 8 Line 44)" of the Cedrone reference with respect to such features, Applicant notes the Examiner also cites "(Column 17 Line 22-25)" of the Srinivasan reference, which states, "Additionally, as indicated at step 367, when a connection server CS determines that a link 1 has failed, it reroutes any VPCs that it is monitoring, which use this link, by returning to step 210, FIG. 7," with respect to other features of claim 36. Applicant submits such teaching teaches away from the features of claim 36 for which the Examiner cites the portions of the Cedrone reference as allegedly disclosing. Accordingly, Applicant submits it would not have been obvious to one of ordinary skill in the art to combine the alleged teachings of the cited references and, even if an attempt were made to combine such alleged teachings, such an attempt would not yield the subject matter of claim 36.

Regarding claims 24-26, 28-31, 35, and 37-40, as an example, Applicant submits the cited portions of the cited references fail to render obvious the subject matter of such claims. While the Examiner cites portions of the cited references as allegedly teaching the subject matter of such claims, Applicant notes Applicant has submitted argument with respect to claim 23 as to the Srinivasan reference teaching away from a supposed combination with the alleged teachings of the Cedrone reference so as to purportedly yield the subject matter of claim 23, from which claims 24-26, 28-31, 35, and 37-40 directly or indirectly depend. Thus, Applicant submits the Srinivasan reference also teaches away from claims 24-26, 28-31, 35, and 37-40.

Regarding claim 42, as an example, Applicant submits the cited portion of the cited reference fails to render obvious “evaluating a new connection such that rerouting to the new connection occurs when the new connection provides better latency performance than the connection.” While the Examiner cites portions of Figure 4 and "(Column 8 Line 44)" of the Cedrone reference with respect to such features, Applicant notes the Examiner also cites "(Column 17 Line 22-25)" of the Srinivasan reference, which states, "Additionally, as indicated at step 367, when a connection server CS determines that a link 1 has failed, it reroutes any VPCs that it is monitoring, which use this link, by returning to step 210, FIG. 7," with respect to other features of claim 42. Applicant submits such

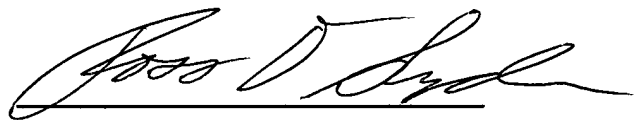
teaching teaches away from the features of claim 42 for which the Examiner cites the portions of the Cedrone reference as allegedly disclosing. Accordingly, Applicant submits it would not have been obvious to one of ordinary skill in the art to combine the alleged teachings of the cited references and, even if an attempt were made to combine such alleged teachings, such an attempt would not yield the subject matter of claim 42.

Regarding claims 43 and 44, as an example, Applicant submits the cited portions of the cited references fail to render obvious the subject matter of such claims. While the Examiner cites portions of the cited references as allegedly teaching the subject matter of such claims, Applicant notes Applicant has submitted argument with respect to claim 42 as to the Srinivasan reference teaching away from a supposed combination with the alleged teachings of the Cedrone reference so as to purportedly yield the subject matter of claim 42, from which claims 43 and 44 directly or indirectly depend. Thus, Applicant submits the Srinivasan reference also teaches away from claims 43 and 44.

Respectfully submitted,

Date

08/11/2009



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